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AUTHOR	Pastore, John O.
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ABSTRACT

Report No. 94-813 from the Senate Committee on Commerce submitted legislation which has the following principal purposes: (1) to expand and perfect with certain amendments, the matching program for construction of noncommercial educational radio and television broadcasting facilities; (2) to authorize to be appropriated $7,500,000 for the fiscal year transition period and $30,000,000 for fiscal year 1977 for such facilities grant program; (3) to establish a telecommunications demonstration Program to Promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information; and (4) to authorize to be appropriated $1,000,000 for fiscal year 1976 and $250,000 for the fiscal year transition period for such demonstration program. The committee reported favorably on the bill and recommended that the bill, as amended, be passed. (HAB)

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Calendar No. 772

94TH CONGRESS, 2d Session } SENATE { REPORT No. 94-813

EDUCATIONAL BROADCASTING FACILITIES AND TELECOMMUNICATIONS DEMONSTRATION ACT OF 1976

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MAY 11, 1976.—Ordered to be printed

Mr. PASTORE, from the Committee on Commerce, submitted the following

REPORT

[To accompany H.R. 9630]

The Committee on Commerce, to which was referred the bill (H.R. 9630) to extend the Educational Broadcasting Facilities Program and to provide authority for the support of demonstrations in telecommunications technologies for the distribution of health, education, and public or social service information, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

SUMMARY AND PURPOSE OF LEGISLATION

H.R. 9630, as reported by the Committee, has the following principal purposes:

(1) To extend and to perfect with certain amendments, the matching grant program for construction of noncommercial education radio and television broadcasting facilities (part IV of title III of the Communications Act of 1934, as amended, 47 U.S.C. 390–392; 393–395; 397–399);

(2) To authorize to be appropriated $7,500,000 for the fiscal year transition period and $30,000,000 for fiscal year 1977 for such facilities grant program;

(3) To establish a telecommunications demonstration program to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information (proposed new section 392A of part IV of title III of the Act); and

(4) To authorize to be appropriated $1,000,000 for fiscal year 1976 and $250,000 for the fiscal year transition period for such demonstration program.

IR 003503

Background

Prior legislation

The Congress enacted the Educational Television Facilities Act of 1962 [1] to assist in the development of noncommercial educational television broadcasting stations throughout the United States. Although the Federal Communications Commission in 1952 had set aside 242 television channel assignments for noncommercial educational use, and by 1961 had increased that number of reserved assignments to 268, only 54 educational stations had come on the air during that nine-year period. As the Committee stated in its report on the 1962 Act:

> It is apparent from the data supplied to your Committee that the failure of the educators to utilize the unused educational reservations is not the lack of interest, desire, planning or zeal on their part. It is apparent that the largest problem facing the educators today in making use of television is the lack of funds to pay for the basic installation of the transmitting apparatus.[2]

To break this financial impasse, the Educational Television Facilities Act of 1962 provided for a program of matching grants to establish and expand noncommercial educational television broadcasting stations, and authorized a Federal commitment of $32 million for the program over a five-year period. By 1967, the program had resulted in 113 new educational television stations either in operation or under construction.

The considerable success of the educational television facilities grant program demonstrated that there was significant and widespread public support for noncommercial educational broadcasting. Building upon this success, the Congress enacted the Public Broadcasting Act of 1967 [3] to foster the growth of noncommercial educational broadcasting as a source of high quality programming responsive to the educational needs and interests of our diverse population and supplementing the existing commercial broadcast system. The 1967 Act established the Corporation for Public Broadcasting to provide a nationwide framework for the development of a public broadcasting system, a system which would both emphasize the critical role of local stations in serving their particular communities and insulate programming and other decision-making from extraneous interference or control.

In the same 1967 Act, the Congress also recognized that the development of high quality programming was necessarily dependent upon public broadcasting's technical capability. The Act, therefore, continued the facilities grant program and extended the program to include noncommercial educational radio facilities.

Extending authorizations for both the Corporation for Public Broadcasting and the facilities grant program have represented a continuing Congressional commitment to assist the growth and development of public broadcasting throughout the United States.

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[1] Public Law 87-447, 87th Cong., 2d Sess. (approved May 1, 1962).
[2] "Report of the U.S. Senate Committee on Commerce To Accompany S. 205," p. 3, 87th Cong., 1st Sess., S. Rept. 67 (1961).
[3] Public Law 90-129, 90th Cong., 1st Sess. (approved Nov. 7, 1967).

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Administration and progress of the public broadcasting facilities grant program

Under the existing facilities grant program, the Secretary of the Department of Health, Education, and Welfare (HEW) awards grants to eligible applicants of up to 75 percent of the cost of acquiring and installing specified radio and television apparatus. Grant funds may not be used for purchase, construction, or repair of buildings, or acquisition of land. Not more than 8½ percent of the funds appropriated for the program in any fiscal year may be granted for projects in any one State.

Under the existing law, there are five classes of eligible program applicants: (1) State or local public school agencies; (2) State public broadcasting agencies and commissions; (3) tax-supported colleges and universities; (4) nonprofit foundations, corporations, or associations organized primarily to engage in public broadcasting; and (5) municipalities which operate public broadcasting stations.

In addition to matching at least 25 percent of individual project costs, applicants must provide assurances that (1) the equipment purchased will be operated for 10 years and will be used only for public broadcasting purposes (i.e., the applicant must have or be in the process of obtaining a license from the Federal Communications Commission (FCC) to engage in public broadcasting); (2) at least the first year's operating funds are on hand or are certified as available; and (3) all building and land costs will be paid from other than program grant funds.

The existing law provides that the Secretary of HEW is to determine which grant applications to approve and the amount of grants to be awarded based on criteria set forth in regulations and designed to achieve (1) prompt and effective use of all public television channels remaining available; (2) equitable geographical distribution of public television and radio facilities throughout the several States; and (3) provision of public television and radio facilities which will serve the greatest number of persons in as many areas as possible and be adaptable to the broadest educational uses.

There has been substantial progress in the construction and development of public broadcasting facilities since the grant program was established in 1962. A total of 556 grants have been awarded to date (404 for public television stations; 152 for public radio stations). This Federal assistance has helped activate approximately 60 percent of the existing public television stations and has played a major role in developing approximately 65 percent of the public radio stations on the air.

Since 1962, the number of public television stations has increased from 76 to 265, located in every State, except Montana and Wyoming, and also in the Virgin Islands, Puerto Rico, American Samoa and Guam. These stations, when fully activated, will be capable of providing service to approximately 80 percent of the national population.

As noted, public radio stations did not become eligible for facilities program grants until 1967. At that time, only 67 of the more than 400 noncommercial radio stations on the air were capable of fully serving the communities to which their frequencies were assigned. Today, there are 169 "full-service" public radio stations located in 39 States, Puerto Rico and the District of Columbia. The total 800 noncom-

mercial radio stations now on the air are capable of providing service to approximately 61 percent of the national population.

It is worth emphasizing that the total Federal investment in the facilities program to date—approximately $106 million—has been less than 10 percent of the gross expenditure from public and private sources, and has stimulated an investment in excess of $1 billion. School systems, universities, corporations, foundations, and other public and private organizations, as well as individual citizens, have thus provided the matching cooperation and contributions which have been essential for the creation and development of local public broadcasting stations across the nation. This extensive non-Federal support of public broadcasting may be the best indication of the worth and success of the facilities program.

Need for Legislation

Extension and Amendment of the Facilities Grant Program

Authorizations

Despite the considerable progress of the facilities program to date, there still exists a strong need for continued Federal support.

Although public radio now reaches about 61 percent of the total United States population, less than one-half of the American public can receive a good signal from the predominantly FM public radio stations. In this regard, 34 of the 100 largest population areas of the nation do not yet have full-service public radio stations. Similarly, while public television stations theoretically cover about 80 percent of the population, the stations presently are able to deliver a good signal to only about two-thirds of the nation's households. This difficulty results from the fact that over half (62 percent) of public television stations are assigned to the UHF band where there are often significant problems in transmission technology and home receiver reception. The ability of public radio and television to close these coverage and reception gaps is in part dependent upon continued Federal funding of the facilities program.

Public broadcasting's development of high quality programming is also contingent upon the local stations' technical capabilities. Improvements in local station production and recording equipment are essential for both expansion of local program origination and station freedom and flexibility in scheduling programs distributed over the national interconnection. These needs and goals cannot be met without continuing Federal support through the facilities grant program.

The following table sets forth the history of facilities program funding through fiscal year 1975:

Fiscal	Authorization	Appropriations
1963–67	[1] $32,000,000	$32,000,000
1968	10,500,000	
1969	12,500,000	4,375,000
1970	15,000,000	5,083,000
1971	15,000,000	11,000,000
1972	15,000,000	13,000,000
1973	25,000,000	13,000,000
1974	25,000,000	15,675,000
1975	30,000,000	12,000,000
Total	180,000,000	106,133,000

[1] Aggregate.

In the Committee's judgment, these authorizations and appropriations have not fully met established program needs. For fiscal year 1975, $30 million was authorized and $12 million appropriated; however, after all funds appropriated for fiscal year 1975 were expended, there remained 100 project applications unacted upon which requested a total of $31.1 million in matching Federal funds.

The authorizations contained in H.R. 9630 ($7,500,000 for the fiscal year transition period and $30,000,000 for fiscal year 1977) represent a reasonable and necessary level of funding to meet the immediate needs of the program. The Committee expects in the future to consider long-range facilities program funding legislation.

Grant criteria

H.R. 9630 would amend the existing criteria for facilities grants contained in the subsection 392(d) of the Communications Act to establish separate criteria for grants for public radio and television station facilities. These separate criteria recognize and reflect the disparity in the development of the two services. As noted above, public television stations now cover about 80 percent of the population of the United States. By contrast, public radio, which was not included in the facilities program until 1967, presently covers only 61 percent of the population. While it is, therefore, appropriate to emphasize the upgrading and expansion of existing station service with respect to television facilities grants, radio facilities grants should continue to promote the extension of services through new public radio station activations. In this regard, the equitable geographic coverage of public radio throughout the United States requires that due consideration be accorded to qualified new radio station grant applicants which represent communities with no existing facilities.

While the Secretary of HEW will retain the flexibility to develop, through regulations, more specific program priorities, the Committee emphasizes that these separate criteria for radio and television are intended as the controlling guidelines for such development.

Inclusion of reception equipment

H.R. 9630 would amend section 397, paragraph (2), of the Act to define the term "construction", as used to identify projects for which facilities grants may be awarded, to include "reception" as well as "transmission" apparatus.

The Committee believes that the facilities program should continue to assist primarily in the development and expansion of station transmission capabilities. However, where program grants for particular reception equipment will assist public broadcasting in meeting a clear and demonstrated service need, the Secretary of HEW should have the discretion and flexibility to consider applications and make awards for that purpose.

In this regard, the provision would allow facilities program grants to be awarded for the purchase of radio subcarrier receivers. Radio subcarrier receivers are single channel receivers tuned to the sidebands of an FM radio station. Such sidebands are used by many public radio stations to distribute readings of print material to the blind. The use of these sidebands is strictly regulated by the Federal Communications Commission, and the necessary subcarrier receivers are only available

to medically certified recipients. Inclusion of this type of reception apparatus under the facilities program will help bring a vital service to the blind and other print-handicapped individuals.

Audio recording equipment

Section 399 of the Communications Act of 1934, as amended in 1973, imposes the following requirements on noncommercial educational licensees:

> (b) (1) Except as provided in paragraph (2), each licensee which receives assistance under this part after the date of enactment of this subsection shall retain an audio recording of each of its broadcasts of any program in which any issue of public importance is discussed. Each such recording shall be retained for the sixty-day period beginning on the date on which the licensee broadcasts such program.

H.R. 9630 provides that from the amounts appropriated for the facilities program, the Secretary of HEW may make a grant to any noncommercial educational broadcast licensee who received assistance under the program of the full amount necessary to acquire the audio log recording equipment for compliance with this requirement. This provision is intended to assist those licensees, particularly in public radio, who are not now financially able, either through their own resources or through another matching facilities program grant, to acquire this necessary equipment. Stations applying for full Federal funding under this provision will need to submit evidence of their continued eligibility to receive funds under the facilities program and will be expected to use the equipment acquired with such full funding for the sole purpose of complying with the requirement of section 399(b)(1).

CREATION OF DEMONSTRATION PROGRAM

H.R. 9630 would establish a separate telecommunications demonstration program administered by HEW to promote the development of nonbroadcast telecommunications facilities for the transmission, distribution, and delivery of health, education, and public or social service information. Under this program, the Secretary of HEW would be authorized, upon application, to make grants and enter into contracts with public and private nonprofit agencies, organizations and institutions to carry out this purpose.[4]

This program is intended to stimulate, with a minimum Federal expenditure, rechanneling of existing local, private and individual resources toward efficient and effective service delivery. The program is not intended to fund large, new hardware systems, but rather to assist health, education, social or other public service communities to test practical applications of existing and potential telecommunications services. It is to be emphasized that the program will fund demonstrations, not operational services, leaving the establishment of any operational service to local user choice.

The demonstration program may assist in testing the service delivery capabilities of such diverse technologies as satellite, coaxial

[4] H.R. 9630 would establish the demonstration program under a separate new Section 392A of the Communications Act. The provisions of Section 392 of the Act pertaining to the facilities grant program will not be applicable to the demonstrations program.

cable, the instructional television fixed service, fiber optics and mini-translators. Possible program projects might involve such activities as open university programming, library sharing, specialized medical uses and the distribution of school audio visuals. These examples are not exhaustive, but rather illustrative of the program's potential range and scope.

The Committee believes that this new program will merit close review, and therefore, it recommends the one year plus transition period authorization contained in H.R. 9630 as an appropriate vehicle for initiating the program. The Committee would stress that the great promise of this program is dependent upon the recommended $1,250,000 authorization. Any lower authorization would not allow the program to achieve its purposes.

CPB, HEW, FCC COORDINATION

Section 395 of the Act presently provides for "consultation and close cooperation" by the Secretary of HEW with the Federal Communications Commission in the administration of his functions which are of interest to or affect the functions of the Commission.

H.R. 9630 would amend this provision to require "close coordination" between the Secretary and the Commission so as to insure a close working relationship and advance coordination with respect to facilities and demonstration program matters of interest to or affecting the functions of the Commission.

H.R. 9630 would also provide in section 395 for "close coordination" between the Secretary and the Corporation for Public Broadcasting with respect to facilities and demonstration program matters of interest to or affecting the functions of the Corporation.

The Committee would emphasize that the success of the facilities and proposed demonstration programs depends on the commitment and interest of those who are charged with the programs' administration. The Committee believes that substantial progress has been made in providing public broadcasting with the technical capability to achieve its mandated purposes and goals. However, much remains to be accomplished, and the need for continued administrative commitment and interest is no less imperative. The Committee, in meeting its oversight responsibilities, intends to insure that this need is met.

HEARINGS

Hearings on H.R. 9630 were held before the Subcommittee on Communications on March 31, 1976.

Testifying at the hearings were representatives of the Department of Health, Education and Welfare, the President of the Corporation for Public Broadcasting, the Vice Chairman of Public Broadcasting Service, the President of the Association of Public Radio Stations, and Mr. Earl W. Haydt, Regional Manager of Pennsylvania Systems of the American Television and Communications Corporation.

The Committee also received written submissions from the Governor of the State of New Mexico, the Joint Council on Educational Telecommunications, and the Public Service Satellite Consortium.

The Committee has fully considered all views presented in recommending the legislation here reported.

Committee Amendment

Existing law (Sec. 392(a)(1)(C) of the Act) states that eligible applicants under the Broadcast Facilities program may be "a college or university deriving its support in whole or in part from tax revenues."

Section 4(a) of H.R. 9630, as referred to the Committee, would have amended this provision to provide that college or university applicants be "a public or private nonprofit college or university."

The Committee has adopted an amendment proposed by Senator Griffin in order to broaden the eligibility of applicants under this provision. As so amended, section 4(a) of the bill would read as follows:

> Sec. 4(a) Section 392(a)(1) of the Communications Act of 1934 is amended by striking out clause (C) and inserting in lieu thereof "(C) a public or private nonprofit college or university *or other educational or cultural institution which is affiliated with an eligible college or university*," (language of Committee Amendment italicized).

The Committee is of the view that where nonprofit public or private educational or cultural institutions are contractually affiliated for educational purposes with eligible colleges or universities and are otherwise qualified to be licensees of noncommercial educational broadcasting stations, such institutions should be considered eligible for grants under the broadcast facilities program.

Conclusion

The noncommercial education broadcast facilities program has been essential for the development and maintenance of local public broadcasting stations across the nation. It has proven its great worth and effectiveness and deserves continued adequate support.

The creation of a demonstration program holds substantial promise for stimulating new and innovative telecommunications technologies to health, education, and public or social service delivery uses. The proposed Federal investment in this program is modest in relation to the potential public benefits.

It is the Committee's judgment that H.R. 9630 is an appropriate and desirable vehicle for accomplishing these objectives, and therefore, recommends enactment of this legislation as clearly in the public interest.

Section-by-Section Analysis

Short title

This legislation may be cited as the "Educational Broadcasting Facilities and Telecommunications Demonstration Act of 1976".

Section 2—Purpose

Subsection (a) amends the heading of part IV of title III of the Communications Act of 1934 to read as follows: ASSISTANCE FOR NONCOMMERCIAL EDUCATIONAL BROADCASTING FA-

CILITIES; TELECOMMUNICATIONS DEMONSTRATIONS; CORPORATION FOR PUBLIC BROADCASTING.

Subsection (b) amends the heading of subpart A of part IV of title III of the Act to read as follows: ASSISTANCE FOR NONCOMMERCIAL EDUCATIONAL BROADCASTING FACILITIES AND TELECOMMUNICATIONS DEMONSTRATIONS.

Subsection (c) amends section 390 of the Act to include demonstrations (through grants or contracts) of the use of telecommunications technologies for the distribution and dissemination of health, education, and other public or social service information.

SECTION 3—AUTHORIZATION OF APPROPRIATIONS

This section amends section 391 of the Act by authorizing an appropriation of $7,500,000 for the fiscal year transition period from July 1, 1976, through September 30, 1976, and an appropriation of $30,000,000 for fiscal year 1977, to assist (through matching grants) in the construction of noncommercial educational television or radio broadcasting facilities. Sums appropriated under this section for any fiscal year or period shall remain available for payment of grants for projects for which applications approved under section 392 have been submitted under such section within one year after the last day of such fiscal year or period.

SECTION 4—CRITERIA FOR BROADCAST FACILITIES CONSTRUCTION

Subsection (a) amends section 392(a)(1) of the Act and provides that eligible facilities program applicants include a public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university.

Subsection (b) amends section 392(d) of the Act and states that—(1) the Secretary of Health, Education, and Welfare shall base his determinations of whether to approve applications for television grants under this section and the amount of such grants on criteria set forth in regulations designed to achieve (A) a strengthening of the capability of existing noncommercial educational television stations to provide local services; (B) the adaptation of existing noncommercial educational television facilities to broad educational uses; and (C) the extension of noncommercial educational television services, with due consideration to equitable geographic coverage throughout the United States; and (2) the Secretary shall base his determination of whether to approve applications of radio grants under this section and the amount of such grants on criteria set forth in regulation and designed to achieve (A) the extension of noncommercial educational radio services with due consideration to equitable geographic coverage throughout the United States; (B) a strengthening of the capability of existing noncommercial educational radio stations to provide local service; and (C) the provision of multiple radio stations in major population centers to broaden services of special interest, minority, and educational uses.

SECTION 5—COORDINATION

This section amends Section 395 of the Act and states that the FCC is authorized to provide such assistance in carrying out the provisions

of this subpart as may be requested by the Secretary; that the Secretary shall provide for close coordination with the FCC in the administration of his functions under this subpart which are of interest to or affect the functions of the Commission; and that the Secretary shall provide for close coordination with the Corporation for Public Broadcasting in the administration of his functions under this subpart which are of interest to or affect the functions of the Corporation.

SECTION 6—CONSTRUCTION

This section amends section 397(2) of the Act and states that the term "construction", as applied to educational television broadcasting facilities or educational radio broadcasting facilities, means the acquisition and installation of transmission and reception apparatus (including towers, microwave equipment, boosters, translators, repeaters, mobile equipment, video recording equipment, nonvideo recording equipment, radio subcarrier receivers, and satellite transceivers) necessary for television broadcasting or radio broadcasting, as the case may be, including apparatus which may incidentally be used for transmitting closed circuit television or radio programs, but the term "construction" does not include the construction or repair of structures to house such apparatus. In the case of apparatus, the acquisition and installation of which is so included, such term also includes planning therefor.

SECTION 7—AUDIO RECORDING EQUIPMENT

This section states that from amounts appropriated pursuant to section 391 of the Act, the Secretary may make a grant to any licensee of a noncommercial educational broadcast station who received assistance under this part of the full amount necessarily to acquire equipment to permit such licensee to comply with paragraph (1) of section 399(b) of the Act which requires that a licensee under this part retain an audio recording for 60 days of each of its broadcasts of any program in which an issue of public importance is discussed.

SECTION 8—TELECOMMUNICATIONS DEMONSTRATIONS

This section adds a new section 392A to the Act establishing a telecommunications demonstration program. Subsection (a) of new section 392A states that it is the purpose of this section to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution and delivery of health, education, and social service information. The Secretary is authorized, upon receipt of an application in such form and containing such information as he may by regulation require, to make grants to, and enter into contracts with public and private nonprofit agencies, organizations and institutions for the purpose of carrying out telecommunications demonstrations.

Subsection (b) states that the Secretary may approve an application submitted under subsection (a) if he determines—

(1) that the project for which application is made will demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this section;

(2) that demonstrations and related activities assisted under this section will remain under the administration and control of the applicant;

(3) that the applicant has the managerial and technical capability to carry out the project for which the application is made; and

(4) that the facilities and equipment acquired or developed pursuant to the application will be used substantially for the transmission, distribution, and delivery of health, education, or social service information.

Subsection (c) states that upon approving any application under this section with respect to any project, the Secretary shall make a grant to or enter into a contract with the applicant in an amount determined by the Secretary not to exceed the reasonable and necessary cost of such project. The Secretary shall pay such amount from the sum available therefor, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

Subsection (d) states that funds made available pursuant to this section shall not be available for the construction, remodeling, or repair of structures to house the facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for, and incident to, the installation of such facilities or equipment.

Subsection (e) states that for purposes of this section, the term "nonbroadcast telecommunications facilities" includes, but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other methods of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic or other means.

Subsection (f) states that the funding of any demonstration pursuant to this section shall continue for not more than three years from the date of the original grant or contract.

Subsection (g) states that the Secretary shall require that the recipient of a grant or contract under this section submit a summary and evaluation of the results of the demonstration at least annually for each year in which funds are received pursuant to this section.

Subsection (h) states that there are authorized to be appropriated $1,000,000 for the fiscal year ending June 30, 1976, and $250,000 for the period July 1, 1976 through September 30, 1976, to carry out the provisions of this section. Sums appropriated under this subsection for any fiscal year or period shall remain available for payment of grants or contracts for projects for which applications approved under this section have been submitted within one year after the last day of such fiscal year or period.

Cost Estimate

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the Committee states that enactment of H.R. 9730 would authorize to be appropriated a total of $38,750,000 ($7,500,000 for the fiscal year transition period and $30,000,000 for fiscal year 1977 for the educational broadcasting facilities program; $1,000,000 for fiscal year

1976 and $250,000 for the fiscal year transition period for the demonstration program).

The Committee knows of no cost estimate by any Federal agency with respect to this legislation which is at variance with its estimate.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the reported bill, as amended, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in Roman):

COMMUNICATIONS ACT OF 1934

* * * * * * *

Title III—Provisions Relating to Radio

* * * * * * *

Part IV—[Grants] *Assistance* for Noncommercial Educational Broadcasting Facilities; *Telecommunications Demonstrations;* Corporation for Public Broadcasting

Subpart A

[Grants for Facilities] *Assistance for Noncommercial Educational Broadcasting Facilities and Telecommunication Demonstrations*

Declaration of Purpose

Sec. 390. [The purpose of this subpart is to assist (through matching grants) in the construction of noncommercial educational television or radio broadcasting facilities.]

The purposes of this subpart are (1) to assist (through matching grants) in the construction of noncommercial educational television or radio broadcasting facilities, and (2) to demonstrate (through grants or contracts) the use of telecommunications technologies for the distribution and dissemination of health, education, and other public or social service information.

Authorization of Appropriations

Sec. 391. [There are authorized to be appropriated for the fiscal year ending June 30, 1974, and for the succeeding fiscal year such sums not to exceed $25,000,000 for the fiscal year ending June 30, 1974, and $30,000,000 for the succeeding fiscal year, as may be necessary to carry out the purposes of section 390. Sums appropriated under this section for any fiscal year shall remain available for payment of grants for projects for which applications approved under section 392, have been submitted under such section prior to the end of the succeeding fiscal year.]

There are authorized to be appropriated $7,500,000 for the period July 1, 1976, through September 30, 1976, and $30,000,000 for the fiscal

year ending September 30, 1977, to assist (through matching grants) in the construction of noncommercial educational television or radio broadcasting facilities as provided in this subpart. Sums appropriated under this section for any fiscal year or period shall remain available for payment of grants for projects for which applications approved under section 392 have been submitted under such section within one year after the last day of such fiscal year or period.

GRANTS FOR CONSTRUCTION

SEC. 392. (a) For each project for the construction of noncommercial educational television or radio broadcasting facilities there shall be submitted to the Secretary an application for a grant containing such information with respect to such project as the Secretary may by regulation require, including the total cost of such project and the amount of the Federal grant requested for such project, and providing assurance satisfactory to the Secretary—

(1) that the applicant is (A) an agency or officer responsible for the supervision of public elementary or secondary education or public higher education within the State, or within a political subdivision thereof, (B) in the case of a project for television facilities, the State noncommercial educational television agency or, in the case of a project for radio facilities, the State educational radio agency, [(C) a college or university deriving its support in whole or in part from tax revenues,] *(C) a public or private nonprofit college or university or other educational or cultural institution which is affiliated with an eligible college or university,* (D) (i) in the case of a project for television facilities, a nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial educational television broadcasting and is eligible to receive a license from the Federal Communications Commission for a noncommercial educational television broadcasting station pursuant to the rules and regulations of the Commission in effect on April 12, 1962, or (ii) in the case of a project for radio facilities, a nonprofit foundation, corporation, or association which is organized primarily to engage in or encourage noncommercial educational radio broadcasting and is eligible to receive a license from the Federal Communications Commission; or meets the requirements of clause (i) and is also organized to engage in or encourage such radio broadcasting and is eligible for such a license for such a radio station, or (E) a municipality which owns and operates a broadcasting facility transmitting only noncommercial programs;

(2) that the operation of such educational broadcasting facilities will be under the control of the applicant or a person qualified under paragraph (1) to be such an applicant;

(3) that necessary funds to construct, operate, and maintain such educational broadcasting facilities will be available when needed;

(4) that such broadcasting facilities will be used only for educational purposes; and

(5) that, in the case of an application with respect to radio broadcasting facilities, there has been comprehensive planning for

educational broadcasting facilities and services in the area the applicant proposes to serve and the applicant has participated in such planning, and the applicant will make the most efficient use of the frequency assignment.

(b) The total of the grants made under this part from the appropriation for any fiscal year for the construction of noncommercial educational television broadcasting facilities and noncommercial educational radio broadcasting facilities in any State may not exceed 8½ per centum of such appropriation.

(c)(1) In order to assure proper coordination of construction of noncommercial educational television broadcasting facilities within each State which has established a State educational television agency, each applicant for a grant under this section for a project for construction of such facilities in such State, other than such agency, shall notify such agency of each application for such a grant which is submitted by it to the Secretary, and the Secretary shall advise such agency with respect to the disposition of each such application.

(2) In order to assure proper coordination of construction of noncommercial educational radio broadcasting facilities within each State which has established a State educational radio agency, each applicant for a grant under this section for a project for construction of such facilities in such State, other than such agency, shall notify such agency of each application for such a grant which is submitted by it to the Secretary, and the Secretary shall advise such agency with respect to the disposition of each such application.

(d)(*1*) The Secretary shall base his determinations of whether to approve applications for *television* grants under this section and the amount of such grants on criteria set forth in regulations and designed to achieve [(1) prompt and effective use of all noncommercial educational television channels remaining available, (2) equitable geographical distribution of educational television broadcasting facilities or noncommercial educational radio broadcasting facilities, as the case may be, throughout the States, and (3) provision of educational television broadcasting facilities or noncommercial educational radio broacasting facilities, as the case may be, which will serve the greatest number of persons and serve them in as many areas as possible, and which are adaptable to the broadest educational uses]. *(A) a strengthening of the capability of existing noncommercial educational television stations to provide local services; (B) the adaptation of existing noncommercial educational television facilities to broaden educational uses; and (C) extension of noncommercial educational television services, with due consideration to equitable geographic coverage throughout the United States.*

(2) The Secretary shall base his determination of whether to approve applications for radio grants under this section and the amount of such grants on criteria set forth in regulations and designed to achieve (A) extension of noncommercial educational radio services with due consideration to equitable geographic coverage throughout the United States; (B) a strengthening of the capability of existing noncommercial educational radio stations to provide local service; and (C) the provision of multiple radio stations in major population centers to broaden services for special interest, minority, and educational uses.

(e) Upon approving any application under this section with respect to any project, the Secretary shall make a grant to the applicant in the amount determined by him, but not exceeding 75 per centum of the amount determined by the Secretary to be the reasonable and necessary cost of such project. The Secretary shall pay such amount from the sum available therefor, in advance or by way of reimbursement, and in such installments consistent with construction progress, as he may determine.

(f) If, within ten years after completion of any project for construction of educational television or radio broadcasting facilities with respect to which a grant has been made under this section—

(1) the applicant or other owner of such facilities ceases to be an agency, officer, institution, foundation, corporation, or association described in subsection (a)(1), or

(2) such facilities cease to be used for noncommercial educational television purposes or noncommercial educational radio purposes, as the case may be (unless the Secretary determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation so to do),

the United States shall be entitled to recover from the applicant or other owner of such facilities the amount bearing the same ratio to the then value (as determined by agreement of the parties or by action brought in the United States district court for the district in which such facilities are situated) of such facilities, as the amount of the Federal participation bore to the cost of construction of such facilities.

TELECOMMUNICATIONS DEMONSTRATIONS

SEC. 392A. (a) It is the purpose of this section to promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution and delivery of health, education, and public or social service information. The Secretary is authorized, upon receipt of an application in such form and containing such information as he may by regulation require, to make grants to, and enter into contracts with public and private nonprofit agencies, organizations, and institutions for the purpose of carrying out telecommunications demonstrations.

(b) The Secretary may approve an application submitted under subsection (a) if he determines—

(1) that the project for which application is made will demonstrate innovative methods or techniques of utilizing nonbroadcast telecommunications equipment or facilities to satisfy the purpose of this section;

(2) that demonstrations and related activities assisted under this section will remain under the administration and control of the applicant;

(3) that the applicant has the managerial and technical capability to carry out the project for which the application is made; and

(4) that the facilities and equipment acquired or developed pursuant to the application will be used substantially for the transmission, distribution, and delivery of health, education, or public or social service information.

(c) Upon approving any application under this section with respect to any project, the Secretary shall make a grant to or enter into a contract with the applicant in an amount determined by the Secretary not to exceed the reasonable and necessary cost of such project. The Secretary shall pay such amount from the sum available therefor, in advance or by way of reimbursement, and in such installments consistent with established practice, as he may determine.

(d) Funds made available pursuant to this section shall not be available for the construction, remodeling, or repair of structures to house the facilities or equipment acquired or developed with such funds, except that such funds may be used for minor remodeling which is necessary for and incident to the installation of such facilities or equipment.

(e) For purposes of this section, the term "nonbroadcast telecommunications facilities" includes, but is not limited to, cable television systems, communications satellite systems and related terminal equipment, and other methods of transmitting, emitting, or receiving images and sounds or intelligence by means of wire, radio, optical, electromagnetic or other means.

(f) The funding of any demonstration pursuant to this section shall continue for not more than three years from the date of the original grant or contract.

(g) The Secretary shall require that the recipient of a grant or contract under this section submit a summary and evaluation of the results of the demonstration at least annually for each year in which funds are received pursuant to this section.

(h) There are authorized to be appropriated $1,000,000 for the fiscal year ending June 30, 1976, and $250,000 for the period July 1, 1976 through September 30, 1976, to carry out the provisions of this section. Sums appropriated under this subsection for any fiscal year or period shall remain available for payment of grants or contracts for projects for which applications approved under this section have been submitted within one year after the last day of such fiscal year or period.

* * * * * * *

[PROVISION OF ASSISTANCE BY FEDERAL COMMUNICATIONS COMMISSION]

COORDINATION WITH THE COMMISSION AND THE CORPORATION

SEC. 395. The Federal Communications Commission is authorized to provide such assistance in carrying out the provisions of this subpart as may be requested by the Secretary. The Secretary shall provide for [consultation and close cooperation] *close coordination* with the Federal Communications Commission in the administration of his functions under this subpart which are of interest to or affect the functions of the Commission. *The Secretary shall provide for close coordination with the Corporation for Public Broadcasting in the administration of his functions under this subpart which are of interest to or affect the functions of the Corporation.*

SUBPART C—GENERAL

DEFNITIONS

SEC. 397. For the purposes of this part—

(1) * * *

(2) The term "construction", as applied to educational television broadcasting facilities[,] or educational radio broadcasting facilities, means the acquisition and installation of transmission *and reception* apparatus (including towers, microwave equipment, boosters, translators, repeaters, mobile equipment, [and video-recording equipment)] *video recording equipment, nonvideo recording equipment, radio subcarrier receivers, and satellite transceivers* necessary for television broadcasting or radio broadcasting, as the case may be, including apparatus which may incidentally be used for transmitting closed circuit television *or radio* programs, but *such term* does not include the construction or repair of structures to house such apparatus. In the case of apparatus, the acquisition and installation of which is so included, such term also includes planning therefor.

* * * * * * *

EDITORIALIZING AND SUPPORT OF POLITICAL CANDIDATES PROHIBITED; RECORDINGS OF CERTAIN PROGRAMS

SEC. 399. (a) No noncommercial educational broadcasting station may engage in editorializing or may support or oppose any candidate for political office.

(b)(1) Except as provided in paragraph (2), each licensee which receives assistance under this part after the date of the enactment of this subsection shall retain an audio recording of each of its broadcasts of any program in which any issue of public importance is discussed. Each such recording shall be retained for the sixty-day period beginning on the date on which the licensee broadcasts such program.

(2) The requirements of paragraph (1) shall not apply with respect to a licensee's broadcast of a program if an entity designated by the licensee retains an audio recording of each of the licensee's broadcasts of such a program for the period prescribed by paragraph (1).

(3) Each licensee and entity designated by a licensee under paragraph (2) which retains a recording under paragraph (1) or (2) shall, in the period during which such recording is required under such paragraph to be retained, make a copy of such recording available—

(A) to the Commission upon its request, and

(B) to any other person upon payment to the licensee or designated entity (as the case may be) of its reasonable cost of making such copy.

(4) The Commission shall by rule prescribe——

(A) the manner in which recordings required by this subsection shall be kept, and

(B) the conditions under which they shall be available to persons other than the Commission.

giving due regard to the goals of eliminating unnecessary expense and effort and minimizing administrative burdens.

(5) From amounts appropriated pursuant to section 391 after the date of enactment of this paragraph, the Secretary may make a grant to any licensee of a noncommercial educational broadcast station who received assistance under this part of the full amount necessary to acquire equipment to permit such licensee to comply with paragraph (1) of this subsection.

AGENCY COMMENTS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
OFFICE OF THE SECRETARY,
Washington, D.C., March 1, 1976.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for a report on H.R. 9630, a bill "To extend the Educational Broadcasting Facilities Program and to provide authority for the support of demonstrations in telecommunications technologies for the distribution of health, education, and public or social service information, and for other purposes."

In summary, H.R. 9630 substantially embodies an Administration proposal for the extension of the Educational Broadcasting Facilities Program and for the creation of a new Telecommunications Demonstration authority. However, we object strongly to certain provisions in the bill as approved by the House of Representatives, particularly the proposed funding level, the modification of the criteria for funding of facilities applications, separation of the authorizations for the broadcast facilities program from that for the demonstration authority, and the limited duration of the authorization of appropriations, and would support the bill only with the changes described below.

The bill would assist (through matching grants) in the construction of noncommercial educational television or radio broadcasting facilities and promote the development of nonbroadcast telecommunications facilities and services for the transmission, distribution, and delivery of health, education, and public or social service information. It proposes a total of $7,500,000 to support facilities grants for the period July 1, 1976, through September 30, 1976, and $30,000,000 for the fiscal year ending September 30, 1977. In addition, the bill proposes $1,000,000 for demonstration grants or contracts for the fiscal year ending June 30, 1976, and $250,000 for the period July 1, 1976, through September 30, 1976.

With regard to the funding level for facilities, we believe that the authorization of $30,000,000 for one year greatly exceeds the highest priority needs of the program and is, therefore, fiscally unnecessary. We also believe that the $7,000,000 annual authorization level recommended by the Administration is adequate to accomplish the goals expressed in our proposal and further articulated in the testimony of the Assistant Secretary for Planning and Evaluation, William A. Morrill, on June 13, 1975, before the House Subcommittee on Communications.

In H.R. 9630 the criteria upon which the Secretary shall base his determinations of whether to approve applications for grants have been separated for television and for radio and are given in a different order for the two. The bill may be read as implying that these criteria are fixed priorities which must be followed in funding applications under the facilities program. It should be made clear that any criteria contained in the statute are meant to serve as a framework around which the Secretary, through regulations, can develop specific priorities in which changing needs can be more readily reflected. Therefore, it is recommended that Section 4 be modified by substituting the language proposed in H.R. 4564. In any event, clause (C) of section 392(d)(2) should be eliminated, because providing cost effective first radio service to all people is more important than multiple radio service in major population centers.

A single authorization for both the Educational Broadcasting Facilities Program and the Telecommunications Demonstration authority, as opposed to the separate authorizations now in H.R. 9630, would allow the Department the flexibility necessary to respond quickly and effectively to changing conditions. While we have suggested approximate funding levels for these programs in the past, we believe that their needs will be better served by a single authorization.

Limiting the authorization for these programs to one year or less, as proposed in H.R. 9630, will unduly constrain our ability to make orderly and efficient plans for a nationwide public service telecommunications system. The limited period of authorization would also serve to discourage potential local and institutional partnerships in these long-range developments from investing their own resources in the face of what might appear to be a short-term Federal commitment. Further, cooperative efforts with NASA, other Federal agencies, and private organizations require long-term commitments to support the experimentation and evaluation associated with new telecommunications technology.

In addition, I am enclosing a list of specific recommendations which cover other provisions of concern to us. I hope you will find them useful in your consideration of the bill.

We therefore recommend that the bill be favorably considered, if it is modified to meet the concerns described above.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

MARJORIE LYNCH, *Under Secretary.*

Enclosure.

ADDITIONAL HEW COMMENTS ON H.R. 9630

In addition to the major concerns expressed in Secretary Mathews' letter, the Department of Health, Education, and Welfare has the following comments with regard to specific provisions in the measure.

1. The definition of "construction" in H.R. 9630 contains language that would open up an entirely new area of Federal support under the facilities program. The program has not in the past supported recep-

tion facilities other than those necessary to monitor signals being transmitted. If receivers do become eligible for Federal funding, as proposed in H.R. 9630, one result might be the ownership and distribution of receivers by noncommercial educational television or radio stations. This is not a proper function of such stations. Thus, it is recommended that on page 5 the words "and reception" be omitted from line 9 and the words "radio subcarrier receivers" be omitted from line 12. In addition, the inclusion of non-video recording equipment and satellite transceivers in lines 11 through 13 should be deleted, as they are covered under existing regulations for the facilities program.

2. Section 399(b)(5), which provides one hundred percent grants to television and radio stations for the purchase of log-recorders, should be deleted. Such equipment can now be purchased but, as is the case with all other equipment, must meet the minimum 25 percent matching requirement. Most television stations and many radio stations already have equipment necessary to comply with paragraph (1) of Section 399(b)). To provide full funding to those stations not having equipment would discriminate against those which have either purchased it with local funds or through a matching facilities grant from the Federal Government.

OFFICE OF TELECOMMUNICATIONS POLICY,
EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., March 15, 1976.

Hon. WARREN G. MAGNUSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: You have requested the views of the Office of Telecommunications Policy on H.R. 9630, a bill to extend the DHEW Educational Broadcast Facilities Program and to provide authority for DHEW support of demonstrations in telecommunications technologies for the distribution of health, education, and public or social service information.

This bill, inter alia, would authorize the appropriation of $37.5 million for the period July 1, 1976, through the fiscal year ending September 30, 1977, to assist in the construction of noncommercial educational television or radio broadcasting facilities. A separate appropriation of $1,250,000 would be authorized for demonstration grants or contracts to promote the development of nonbroadcast telecommunications facilities and services through September 30, 1976.

We note that the authorization for the facilities program is significantly in excess of that contained in the Administration's legislative proposal, H.R. 4564. ($7 million per year for five years for both programs.) Moreover, H.R. 9630 would provide separate appropriation authorizations for the construction of broadcast facilities and for nonbroadcast facilities demonstrations. We strongly support a single appropriation authorization as contained in H.R. 4564.

The original purpose of the facilities program was to assist in the construction of noncommercial educational broadcast stations in order to expand the availability of educational broadcast services.

The present coverage of educational broadcast service already reaches approximately 80 percent of the population. Accordingly, we believe that continued Federal subsidy at the levels contemplated by

H.R. 9630 is excessive and unwarranted. The marginal costs of reaching the remaining 20 percent of the population by conventional broadcast technology exceeds the benefits to be gained.

The Administration's budget recommendations represent a fair and proper evaluation of the needs of the facilities program given the present coverage of the educational broadcast system and the potential availability of new, more effective means of program distribution. We therefore oppose enactment of H.R. 9630 unless modified to address the concerns discussed above.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program, and that enactment of H.R. 4564 would be in accord with the President's program.

Sincerely,

JOHN EGER,
Acting Director.

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., March 30, 1976.

Hon. JOHN O. PASTORE,
Chairman, Subcommittee on Communications, Committee on Commerce, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the Commission's views on S. 1257 and H.R. 9630, bills concerning educational broadcasting facilities and a telecommunications demonstration program. We appreciate the opportunity to comment on these bills.

S. 1257 and H.R. 9630 would amend the Communications Act of 1934 to extend the Educational Broadcasting Facilities Program and to provide authority for the support of demonstrations in telecommunications technologies for the distribution of health, education, and social service information. The Commission generally supports both these goals. We do, however, have two major reservations concerning the bills.

First, in 1964, the FCC authorized a frequency band for a low-powered television microwave service called the Instructional Television Fixed Service (ITFS). ITFS now provides a locally controlled, simultaneous, four-channel instructional television system at costs far below those required for educational television broadcasting stations. At this time, there are approximately 195 ITFS systems with about 550 channels on the air—even though there has been no federal funding for this service.

Our initial analysis of S. 1257 and H.R. 9630 had given us some concern that the Instructional Television Fixed Service might not qualify for grants since it was not specifically referred to in the bills. The Commission, therefore, was pleased to note that Mr. William A. Morrill, Assistant Secretary for Planning and Evaluation, Department of Health, Education and Welfare, in his statement to the House Subcommittee on a similar bill, H.R. 4564, expressly pointed out that HEW expects to fund demonstrations of telecommunications systems such as ITFS. We believe, nevertheless, that it is appropriate that ITFS be specifically named in § 5 (§ 392A(e)) of S. 1257 and § 8

(§ 392A(e)) of H.R. 9630, or, at least, that the legislative history make clear that ITFS is intended to be included.

The Commission's second reservation is more general. It is obvious that some of the projects which would be proposed for funding under the bills would require FCC licensing and approval. We believe, therefore, that it is appropriate for the Commission to be consulted before any decision is made on funding projects under the bills. To achieve this, close coordination should be required between the FCC and HEW, and the FCC should be given some formal participation in the selection and evaluation of projects.

Section 395 of the Communications Act currently requires "consultation and close cooperation" on the part of HEW with the FCC. H.R. 9630 would change this requirement to "close coordination" (§ 5). While we understand this change was intended to strengthen HEW's coordination requirements with the FCC in this area, some explicit recognition of this in the Committee report seems desirable to emphasize that whatever language is used requires a close working relationship and advance coordination with FCC with respect to matters of interest to or affecting the functions of the Commission. The Commission should be given some formal participation in the selection and evaluation of these demonstrations.

H.R. 9630, furthermore, refers in the proposed § 392(d)(2)(c) regarding radio grants to "multiple radio stations in major population centers to broaden services for special interest, minority, and educational uses." This language apparently means, essentially, 10 watt stations. The Commission wishes to call attention to the fact that it has issued proposed rulemaking which deals with noncommercial FM broadcasting including 10 watt stations. It is possible that the findings of the FCC may influence the purpose of § 392(d)(2)(c) and the development of multiple radio stations in population centers.

Finally, consideration might be given to adding non-affiliated individuals and profit making organizations to those eligible for grants or contracts under the proposed § 392A(a) which would be added to the Communications Act by both bills. These entities might well have the necessary expertise and initiative to develop proposals which HEW may wish to support in accomplishment of its goal of demonstrating the use of telecommunications technologies for the distribution of social service information.

Sincerely yours,

RICHARD E. WILEY, *Chairman.*

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